

1 KEKER & VAN NEST LLP  
2 ROBERT A. VAN NEST - #84065  
3 BRIAN L. FERRALL - #160847  
4 DAVID SILBERT - #173128  
5 MICHAEL S. KWUN - #198945  
6 633 Battery Street  
7 San Francisco, CA 94111-1809  
8 Telephone: (415) 391-5400  
9 Email: rvannest@kvn.com;  
10 bferrall@kvn.com; dsilbert@kvn.com  
11 mkwun@kvn.com

SUSAN CREIGHTON, SBN 135528  
SCOTT A. SHER, SBN 190053  
WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
1700 K Street NW, Fifth Floor  
Washington, D.C., 20006-3817  
Telephone: (202) 973-8800  
Email: [screighton@wsgr.com](mailto:screighton@wsgr.com);  
[ssher@wsgr.com](mailto:ssher@wsgr.com)

8 JONATHAN M. JACOBSON, NY SBN 1350495  
9 CHUL PAK (*pro hac vice*)  
10 DAVID H. REICHENBERG (*pro hac vice*)  
11 WILSON SONSINI GOODRICH & ROSATI  
12 Professional Corporation  
13 1301 Avenue Of The Americas, 40th Floor  
14 New York, NY 10019-6022  
15 Telephone: (212) 999-5800  
16 Email: jjacobson@wsgr.com; cpak@wsgr.com;  
17 dreichenberg@wsgr.com

13 Attorneys for Defendant ARISTA NETWORKS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Case No. 5:14-cv-05344-BLF (NC)

Plaintiff,

V.

ARISTA NETWORKS, INC.,

Defendant.

**DECLARATION OF ELIZABETH  
MCCLOSKEY IN SUPPORT OF  
DEFENDANT ARISTA NETWORKS,  
INC.'S ADMINISTRATIVE MOTION TO  
FILE DOCUMENTS UNDER SEAL IN  
CONNECTION WITH ITS REPLY IN  
SUPPORT OF ITS MOTION TO STRIKE  
EXPERT OPINIONS AND TESTIMONY  
OF DR. JUDITH A. CHEVALIER**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

DECLARATION OF ELIZABETH MCCLOSKEY IN SUPPORT OF DEFENDANT ARISTA  
NETWORKS, INC.'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL  
Case No. 5:14-cv-05344-BLF (NC)

1 I, ELIZABETH McCLOSKEY, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and admitted to  
 3 practice before this Court. I am an associate at the law firm of Keker & Van Nest, LLP and  
 4 counsel for Defendant Arista Networks, Inc. ("Arista") in the above-captioned action. I have  
 5 personal knowledge of the facts stated herein and, if called as a witness, I could testify  
 6 competently thereto.

7 2. I submit this declaration in support of Arista's Administrative Motion to File  
 8 Under Seal Confidential Information and Documents Submitted with its Reply in Support of its  
 9 Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier.

10 3. I understand that Arista's Reply in Support of its Motion to Strike Expert Opinions  
 11 and Testimony of Dr. Judith A. Chevalier relates to a non-dispositive motion. In this context, I  
 12 understand that materials may be sealed so long as the party requesting the sealing order makes a  
 13 "particularized showing" under the "good cause" standard of Federal Rule of Civil Procedure  
 14 26(c). *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting  
 15 *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In  
 16 addition, I understand that Civil Local Rule 79-5 requires that a party seeking sealing "establish[]  
 17 that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise  
 18 entitled to protection under the law" (i.e., that the document is "sealable"). Civil L.R. 79-5(b).  
 19 The sealing request must also "be narrowly tailored to seek sealing only of sealable material." *Id.*

20 4. Arista seeks to seal the following material:

| Document  | Portions of Document to be Sealed |
|---|-----------------------------------|
| Defendant Arista Networks, Inc.'s Reply in Support of its Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier | Highlighted portions              |

21 5. Good cause exists to file under seal the following highlighted material in the  
 22 foregoing document: (1) *Highlighted text at Page 1, line 20*; (2) *Highlighted text at Page 1, line*  
 23 *24*; (3) *Highlighted text at Page 4, lines 3-4*; and (5) *Highlighted text at Page 5, lines 9-11*. Those

1 portions of the foregoing document discuss and purport to summarize highly confidential Arista  
 2 business information, as well as witness statements, emails, and documents that discuss the  
 3 design and development of Arista software, Arista's marketing and sales strategies, product  
 4 testing and feature development, and overall product development strategies, all of which is  
 5 sensitive and highly confidential business information to Arista. See *Apple v. Samsung*, 727 F.3d  
 6 1214, 1221–22 (Fed. Cir. 2013) (sealing is appropriate even under the compelling standards  
 7 threshold if the release of the information will cause competitive harm to a business); *Apple Inc.*  
 8 v. *Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) (“The publication of materials that could  
 9 result in infringement upon trade secrets has long been considered a factor that would overcome  
 10 this strong presumption.”); *see also Nixon v. Warner Commc'n, Inc.*, 435 U.S. 589, 598 (1978)  
 11 (“common-law right of inspection has bowed before the power of a court to insure that its  
 12 records” are not used as “sources of business information that might harm a litigant’s competitive  
 13 standing”); *Ovonic Battery Co. v. Sanyo Elec. Co.*, Case No. 14-cv-01637, 2014 WL 2758756, at  
 14 \*2-3 (N.D. Cal. June 17, 2014) (where public disclosure of business information could harm a  
 15 litigant’s competitive standing by placing it “in a diminished bargaining position in future  
 16 negotiations with potential customers and competitors,” the records should be sealed).

17       6. For the remaining highlighted portion of Arista’s Reply in Support of its Motion to  
 18 Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier, located at page 1, lines 13-14,  
 19 Arista is submitting that material under seal because it discusses Dr. Judith A. Chevalier’s  
 20 deposition testimony and expert reports, which have been designated by Cisco as “Highly  
 21 Confidential – Attorney’s Eyes Only” under the Protective Order. I understand that Cisco may  
 22 file a declaration under Civil Local Rule 79-5(e)(1) to attempt to establish good cause to submit  
 23 any of that information in the foregoing document under seal. Arista takes no position as to  
 24 whether any Cisco-designated confidential material should be filed under seal.

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Executed August 26, 2016, at San Francisco, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ *Elizabeth McCloskey*  
ELIZABETH McCLOSKEY

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